

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Stephen L. D'Angelo, *
Plaintiff *
*
v. *
*
New Hampshire Supreme Court, *
Brian Germane, Esq., *
Defendants *
*

**OBJECTION TO MOTION FOR PRELIMINARY INJUNCTION
BY THE NEW HAMPSHIRE SUPREME COURT**

Defendant, the New Hampshire Supreme Court, by and through counsel, the office of the Attorney General, hereby object to the motion for preliminary injunction filed by Plaintiff. In support thereof, Defendant states as follows.

1. The complaint and documents of which the court should take judicial notice demonstrate that at bottom, Plaintiff is asking the federal court to vacate and reverse orders of the Derry Family Court (“DFC”) that were appealed to the New Hampshire Supreme Court (“NHSC”) but that were declined by the NHSC, and/or to require the DFC to provide a further evidentiary hearing. He further requests a TRO and/or preliminary injunction. The NHSC has concurrently herewith filed a Motion to Dismiss and memorandum of law.

2. As found by the Magistrate Judge in the Report and Recommendation (“R & R”) issued on November 8, 2012¹ (*see* ECF Dkt # 8), the Plaintiff’s claims should be dismissed and the TRO/Preliminary Injunction denied because the *Rooker-Feldman* doctrine precludes a federal

¹ The Motion to Dismiss and this Objection will be moot if the R & R is adopted by the court. However, as the complaint and this motion were served, the NHSC defendant files objection and the motion to dismiss to avoid any possibility that plaintiff could claim the defendant was in default and to suggest additional legal basis for dismissal of plaintiff’s complaint and to deny the motion for TRO/Preliminary Injunction.

district court from reviewing a final judgment of a state court. The NHSC contends that the Plaintiff is unlikely to succeed on the merits for the reasons set forth in the R & R, as well as for the additional legal reasons that the complaint should be dismissed argued in the NHSC's motion to dismiss, which are incorporated herein by reference.

3. It is well accepted that a plaintiff must satisfy the following four essential criteria in order to prevail on a request for preliminary injunctive relief: (1) that the plaintiff will suffer irreparable injury if the injunction is not granted; (2) that such injury outweighs any harm which granting injunctive relief would inflict on the defendant; (3) that the plaintiff has exhibited a likelihood of success on the merits; and (4) that the public interest will not be adversely affected by the granting of the injunction. *See Planned Parenthood League v. Bellotti*, 641 F.2d 1006, 1009 (1st Cir. 1981). A plaintiff seeking injunctive relief must independently satisfy each of these preliminary injunction factors. *See Auburn News Co. v. Providence Journal Co.*, 659 F.2d 273, 277 (1st Cir. 1981). The proponent of the injunction also has the burden of persuading the court by a preponderance of the evidence that the preliminary injunctive relief should be issued. *See Lovell v. Brennan*, 728 F.2d 560, 563 (1st Cir. 1984) (holding that burden of persuasion lies with the moving party). Plaintiff is not entitled to preliminary injunctive relief because he does meet these threshold requirements.

4. The memorandum of law filed in support of the Motion to Dismiss is incorporated herein as though set forth in full.

WHEREFORE, for the reasons stated herein, Defendant respectfully request that the court order as follows:

- A. That the motion for TRO/Preliminary Injunction be denied;
- B. For such other and further relief as is just and necessary.

Respectfully submitted,

NEW HAMPSHIRE SUPREME COURT

By their attorney,

MICHAEL A. DELANEY
ATTORNEY GENERAL

Date: November 19, 2012

/s/ Nancy J. Smith
Nancy J. Smith, NH Bar No. 9085
Senior Assistant Attorney General
New Hampshire Attorney General's Office
33 Capitol Street
Concord, New Hampshire 03301-6397
Telephone: (603) 271-3650
Email: nancy.smith@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following persons on this date and in the manner specified herein: Conventionally served by first class mail to Stephen D'Angelo and by the court's ECF filing on all other counsel of record.

Date: November 19, 2012

/s/ Nancy J. Smith
Nancy J. Smith
NH Bar # 9085